

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

Hallie Olson,
Appellant

vs.

Cascade County
Transportation Committee,
Respondent

MEMORANDUM OPINION
OSPI 69-84

* * * * *

This is an appeal by Hallie Olson, parent of a school-aged child who attends school at Fairfield School District. The Cascade County Transportation Committee (hereinafter referred to as Committee) at its regularly held spring transportation meeting of May 17, 1984, denied approval of the Fairfield school bus route operating on the Crow Bench. From the record, it appears that the bus route crisscrossed Teton and Cascade County boundaries. Appellant had requested a hearing subsequent to the denial of the approval for the bus route before the Cascade County Transportation Committee. That request was denied. Subsequent to the denial Appellant filed this appeal.

This is a timely appeal pursuant to the Administrative Rules of Montana. (See Section 10.6.101 Administrative Rules of Montana.)

Appellant has raised three issues on appeal:

1. Whether the Cascade County Transportation Committee had a duty to provide the requested hearing.

2. Whether the May 17, 1984, meeting of the Cascade County Transportation Committee constituted a hearing.

3. Given the fact that there was not a hearing prior to this appeal, what is the proper relief for Appellant?

This State Superintendent finds that no hearing was conducted, and therefore, no specific findings were made nor conclusions of law drawn from these findings. The materials referenced within this memorandum opinion are from the "record" as it appears and is defined by Section 10.6.118, Administrative Rules of Montana.

Beginning in the mid-1950s, Fairfield School District #21, Teton County, has, with the approval of the Cascade County Transportation Committee, provided bus transportation to bussed pupils on the Crow Bench who desire to attend school at Fairfield.

On September 29, 1983, the Crow Bench bus route was again routinely approved without objection. This is evidenced by the minutes of the Cascade County Transportation Committee, attached to the Brief of Appellant in the record.

On April 12, 1984, the Cascade County Superintendent of Schools notified Fairfield Schools that the spring meeting of the Cascade County Transportation Committee would be held on May 17, 1984. At that meeting, the Committee denied approval of the Crow Bench bus route. On June 13, 1984, a request for a hearing before the Committee was sent to the Cascade County Superintendent of Schools. That request for a hearing was denied.

Appellant argues that the Committee failed to exercise its fact-finding duties with regard to the Crow Bench bus route and acted arbitrarily and capriciously in disapproving the route. Further, Appellant contends that the committee violated its statutory and administrative duties to provide a hearing on the disapproval of the bus route. The basis for this argument is that parties must have a right of due process, a fundamental right guaranteed even in school transportation issues. Appellant raised both statutory and constitutional references. Respondents, on the other hand, argue that the statute in question, Section 20-10-132(1)(d) MCA, involves an appeal from a decision of the board of trustees. Respondent further argues that Appellant is not entitled to a hearing under the statute because there was no denial of a hearing and there was no final decision of the board of trustees.

Respondent's statutory argument is correct. Section 20-10-132(1)(d) MCA, provides an appeal procedure from the decisions of the board of trustees affecting school transportation controversies. However, this State Superintendent has extended the powers of the county transportation committee and the responsibilities of the committee in this transportation field. The void of procedural due process in instances like this case is the rationale for this State Superintendent directing that a procedural due process hearing be established. This State Superintendent, pursuant to Section 20-10-131, MCA, and Section 10.6.101, Administrative Rules of Montana, has adopted rules for the conduct of transportation controversy matters.

County Transportation Committee: All matters contested before the county transportation committee shall be governed by these rules of controversy. It shall be the duty of the county superintendent, and the chairperson of the county transportation committee to ensure compliance. All references made to the county superintendent as to the procedures on these school rules shall also include the county transportation committee where appropriate. (See Section 10.6.101 ARM.)

Therefore, this State Superintendent has extended the responsibility of the county transportation committee to become the fact-finding unit at the local level to determine the appropriateness of a decision on bus route approval or disapproval made by the county transportation committee.

Section 10.6.102, ARM, states:

School controversy means contested case (1) Contested case means any proceeding in which a determination of legal rights, duties or privileges of a party is required by law.

This State Superintendent agrees with Respondent's argument that the State Superintendent should not be put in a position to make a decision on a local matter. This State Superintendent's philosophy and precedence in the adoption of rules for school controversy are that fact-finding in controversies involving schools must reside at the county level. The appropriate unit for determining findings of facts and drawing conclusions of law therefrom is the Cascade County Transportation Committee. The controversy arises from the disapproval of a bus route in Cascade County. If the bus route is not approved and if the Fairfield School District chose to run the bus route on that particular Cascade County line, then

Fairfield School District may lose or forfeit their bus transportation monies and have the monies suspended for an indefinite time. Therefore, this State Superintendent is reluctant to place himself in a fact-finding position and finds that it is appropriate in this case for the Committee to complete an evidentiary hearing on their disapproval decision. Procedural due process would be preserved. Subsequent to the hearing, the Committee must make findings of facts, draw conclusions of law, and issue an order. From that order, an appeal may be made to this State Superintendent. This State Superintendent shall review the findings, conclusions and order based on the standards of review as found in the Montana Administrative Procedures Act and, more particularly, Section 10.6.125, ARM.

Accordingly, this matter is remanded for a fact-finding hearing by the Cascade County Transportation Committee, pursuant to Section 20-10-132 MCA and following the procedures outlined in Section 10.6.101, et seq. ARM. This State Superintendent further calls to the attention of all parties the rule of law set out in two cases, entitled In the Matter of the Appeal of Petronella Spotted Wolf, OSPI No. 3-81 and In the Matter of the Appeal of Petronella Spotted Wolf, OSPI No. 52-83, compilation of the Superintendent of Public Instruction's Decisions and Orders, Volume 3 (1983).

Appellant further requested that a temporary order be issued, vacating the disapproval of the bus route pending a fact-finding and administrative review procedure. Appellant contends that the Committee should not be allowed to abandon

its long-standing approval of the bus route without conducting a fact-finding hearing, and that the Committee's refusal to grant the requested hearing amounts to a calculated indifference to the rights of Appellant and others similarly situated.

This State Superintendent has been presented with no clear statutory authority to issue such temporary order. Therefore, the request for the issuance of the temporary order vacating the disapproval of the bus route pending a fact-finding hearing is denied.

Further, this State Superintendent directs that the Cascade County Transportation Committee expeditiously convene a hearing on the issues raised on appeal.

It is therefore ordered.

Dated this 21st day of November, 1984.